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Attorneys for Defendants

UNITED STATES DISTRICT COURT – SOUTHERN DISTRICT OF  
CALIFORNIA

CHAD MCKINNEY, an individual,  
Plaintiff,

v.

APOLLO GROUP, INC.,  
UNIVERSITY OF PHOENIX, a  
Corporation, MECHELLE  
BONILLA, an Enrollment Manager  
at UNIVERSITY OF PHOENIX,  
KYAN FLYNN, Director of  
Enrollment at UNIVERSITY OF  
PHOENIX, APRIL ALCORN, an  
Employees Relations Consultant at  
UNIVERSITY OF PHOENIX,  
CARLYN LINDSTEN, Associate  
Director of Enrollment at  
UNIVERSITY OF PHOENIX

Defendants

CASE NO. 07-CV-2373 WQH CAB

**DEFENDANT APOLLO GROUP  
INC.'S OPPOSITION TO  
PLAINTIFF'S MOTION TO STRIKE  
THE DEFENDANTS' NOTICE OF  
NON-OPPOSITION TO MOTION  
TO DISMISS PLAINTIFF'S  
COMPLAINT, OR, IN THE  
ALTERNATIVE, MOTION FOR  
MORE DEFINITE STATEMENT;  
DECLARATION OF ANH DUFOUR**

**[FRCP 12(b)(2); 12(b)(5); 12(b)(6);  
12(e).]**

Date: May 12, 2008

Time: 11:00 a.m.

Courtroom: 4

Judge: Hon. William Q. Hayes

DATE OF FILING: December 19, 2007

Plaintiff Chad McKinney ("McKinney") has filed a motion to strike University of Phoenix's ("UOP") notice of non-opposition to defendants' motion to dismiss plaintiff's complaint, or in the alternative, motion for more definite statement ("Motion to Dismiss") and motion to set aside default ("Motion to Set Aside") (collectively "Motions") under the sole contention that he did not receive "all of the documentation necessary to successfully defend himself." Not only does McKinney fail to state what documentation he allegedly did not receive but the focus of his motion is an irrelevant diatribe about his alleged previous failure to receive one page of a document and his belief that defendants' counsel is engaging in a deceptive strategy. In fact, UOP properly sent the Motions in order to effectuate service and McKinney received them. What McKinney appears to have failed to realize is that UOP served McKinney with its Motion to Set Aside in the same package as its Opposition to Plaintiff's Motion for Clerk's Entry of Default, which McKinney has already replied to and which he has never alleged he did not receive, thereby making it impossible that McKinney did not receive the Motion to Set Aside as well.

# I.

## UOP PROPERLY EFFECTUATED SERVICE

On March 31, 2008, UOP filed and served its Motion to Dismiss by Federal Express on McKinney at the address provided by McKinney and listed in the caption, 6266 Madeline Street, Apartment #61, San Diego, California 92115. [Declaration of Anh Dufour, ¶ 2, Ex. 1.] The document was picked up by Federal Express at 600 Anton Boulevard, Costa Mesa, California 92626. [Id.] The Federal Express package containing the Motion to Dismiss was delivered to McKinney's address and left at his front door on April 1, 2008. [Declaration of Anh Dufour, ¶ 3, Ex. 2.] On April 1, 2008, UOP filed and served its Motion to Set Aside by Federal Express on McKinney at the address provided by McKinney and listed in the caption, 6266 Madeline Street, Apartment #61, San Diego, California 92115.

1 event service is complete upon mailing. Apollo served McKinney with its Motion  
 2 to Dismiss by sending the Motion by express mail to McKinney's last know  
 3 address and thus service was properly effectuated.

## 4 5 II.

### 6 MCKINNEY RECEIVED THE MOTION TO DISMISS

7 While it appears to be McKinney's "Affidavit that he never received [the  
 8 Motion to Dismiss]," McKinney filed an Opposition to Apollo's Motion to Set  
 9 Aside and an Opposition to Apollo's Opposition to Plaintiff's Motion for Clerk's  
 10 Entry of Default on March 31, 2008. As Apollo served in the same Federal Express  
 11 package as the Motion to Dismiss both the Motion to Set Aside and its Opposition  
 12 to Plaintiff's Motion for Clerk's Entry of Default which McKinney has responded  
 13 to, despite his affidavit to the contrary, McKinney clearly received the Motion to  
 14 Dismiss on March 10, 2008 as well in the same package in which he received  
 15 Apollo's Opposition to Plaintiff's Motion for Clerk's Entry of Default. [See  
 16 Declaration of Anh Dufour, ¶ 2.]

17  
18 Date: May 15, 2008

SNELL & WILMER L.L.P.

19  
20 By: s/Nathan W. Hicks

Christy Joseph

Nathan W. Hicks

21 Attorneys for Defendants  
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Declaration of Anh Dufour

I, Anh Dufour, declare:

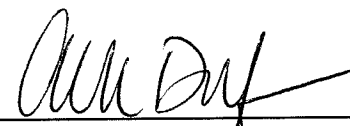
1. I am over the age of 18 and the secretary to Nathan W. Hicks at the law firm of Snell & Wilmer L.L.P., attorneys of record in this matter for defendants ("Defendants"). Except where indicated, I state the following of my own knowledge and if called upon to do so could testify competently to the following.

2. On March 7, 2008, I sent by Federal Express Apollo Group, Inc.'s Motion to Dismiss Plaintiff's Complaint, or in the Alternative, Motion for More Definite Statement, Motion to Set Aside Entry of Default, and Opposition to Plaintiff's Motion for Clerk's Entry of Default to plaintiff Chad McKinney at his residence, 6266 Madeline St., Apartment #61, San Diego, California 92115. I sent all of these documents together in one package to plaintiff Chad McKinney. A true and correct copy of the proofs of service for these documents is attached hereto as Exhibit 1.

3. On May 13, 2008, I accessed the Federal Express tracking system online and checked the tracking number for these documents. Pursuant to the Federal Express tracking, the Federal Express package containing Apollo Group, Inc.'s Motion to Dismiss Plaintiff's Complaint, or in the Alternative, Motion for More Definite Statement, Motion to Set Aside Entry of Default, and Opposition to Plaintiff's Motion for Clerk's Entry of Default arrived at McKinney's address and was left at his door on March 10, 2008. A true and correct copy of the Federal Express Tracking Statement is attached hereto as Exhibit 2.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: May 15, 2008

  
\_\_\_\_\_  
Anh Dufour

**EXHIBIT 1**

**PROOF OF SERVICE***USDC – Southern District, Case No. 07-CV-2373 WQH CAB*

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, California 92626.

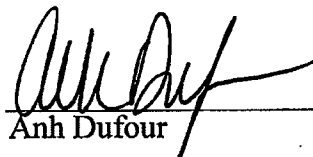
On March 7, 2008, I served, in the manner indicated below, the foregoing document described as **APOLLO GROUPS, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT, OR, IN THE ALTERNATIVE, MOTION FOR MORE DEFINITE STATEMENT** on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

Chad McKinney Pro Se 6266 Madeline Street, Apt. #61 San Diego, CA 92115	Plaintiff  Tel: 619-634-3566
United States District Court Attention: Hon. Judge William Q. Hayes 940 Front Street San Diego, CA 92101	

☒ BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air courier, with next day service, to the offices of the addressees. (C.C.P. § 1013(c)(d)).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 7, 2008, at Costa Mesa, California.

  
Anh Dufour

PROOF OF SERVICE*USDC – Southern District, Case No. 07-CV-2373 WQH CAB*

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, California 92626.

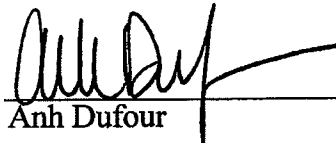
On March 7, 2008, I served, in the manner indicated below, the foregoing document described as **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO SET ASIDE ENTRY OF DEFAULT AGAINST APOLLO GROUP INC.** on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

Chad McKinney Pro Se 6266 Madeline Street, Apt. #61 San Diego, CA 92115	Plaintiff  Tel: 619-634-3566
United States District Court Attention: Hon. Judge William Q. Hayes 940 Front Street San Diego, CA 92101	

☒ BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air courier, with next day service, to the offices of the addressees. (C.C.P. § 1013(c)(d)).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 7, 2008, at Costa Mesa, California.

  
Anh Dufour

**PROOF OF SERVICE***USDC – Southern District, Case No. 07-CV-2373 WQH CAB*

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, California 92626.

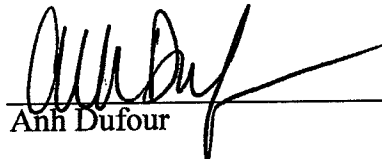
On March 7, 2008, I served, in the manner indicated below, the foregoing document described as **APOLLO GROUP, INC.'S OPPOSITION TO PLAINTIFF'S MOTION FOR CLERK'S ENTRY OF DEFAULT** on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

Chad McKinney Pro Se 6266 Madeline Street, Apt. #61 San Diego, CA 92115	Plaintiff  Tel: 619-634-3566
United States District Court Attention: Hon. Judge William Q. Hayes 940 Front Street San Diego, CA 92101	

☒ BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air courier, with next day service, to the offices of the addressees. (C.C.P. § 1013(c)(d)).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 7, 2008, at Costa Mesa, California.

  
Anh Dufour

8626180

**PROOF OF SERVICE**



**EXHIBIT 2**

[Close Window](#)Track Shipments/FedEx Kinko's Orders  
Detailed Results [Print](#)

<b>Tracking number</b>	790465033269	<b>Reference</b>	11127.9331
<b>Signed for by</b>	Signature release on file	<b>Destination</b>	San Diego, CA
<b>Ship date</b>	Mar 7, 2008	<b>Delivered to</b>	Residence
<b>Delivery date</b>	Mar 10, 2008 12:42 PM	<b>Service type</b>	Standard Pak
		<b>Weight</b>	1.0 lbs.

**Status** Delivered**Signature image available** [No](#)

Date/Time	Activity	Location	Details
<b>Mar 10, 2008</b>	12:42 PM <b>Delivered</b>	San Diego, CA	Left at front door. Package delivered to recipient address - release authorized
	8:33 AM On FedEx vehicle for delivery	SAN DIEGO, CA	
<b>Mar 8, 2008</b>	10:45 AM At local FedEx facility	SAN DIEGO, CA	Package not due for delivery
<b>Mar 7, 2008</b>	6:36 PM Left origin	IRVINE, CA	
	5:45 PM Picked up	IRVINE, CA	
	5:34 PM Package data transmitted to FedEx		

[E-mail results](#)[Track more shipments/orders](#)

Subscribe to tracking updates (optional)

**Your name:** **Your e-mail address:** **E-mail address****Language****Exception updates****Delivery updates**

<input type="text"/>	English		<input type="checkbox"/>
<input type="text"/>	English		<input type="checkbox"/>
<input type="text"/>	English		<input type="checkbox"/>
<input type="text"/>	English		<input type="checkbox"/>

**Select format:** ☒ HTML ☐ Text ☐ Wireless**Add personal message:**

Not available for Wireless or non-English characters.

☐By selecting this check box and the Submit button, I agree to these [Terms and Conditions](#)[Submit](#)

**PROOF OF SERVICE****McKinney v. Apollo Group, Inc., et al.  
USDC, Southern – Case No. 07-CV-2373**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, California 92626-7689.

On May 15, 2008, I served, in the manner indicated below, the foregoing document described as **DEFENDANT APOLLO GROUP INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE THE DEFENDANTS' NOTICE OF NON-OPPOSITION TO MOTION TO DISMISS PLAINTIFF'S COMPLAINT, OR, IN THE ALTERNATIVE, MOTION FOR MORE DEFINITE STATEMENT; DECLARATION OF ANH DUFOUR** on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

Chad McKinney 6266 Madeline Street, Apt. #61 San Diego, CA 92115	Plaintiff, Pro Se  Tel: (619) 634-3566
United States District Court Attention: Hon. Judge William Q. Hayes Courtroom 4 940 Front Street, Room 4290 San Diego, CA 92101-8900	Courtesy Copy  Tel: (619) 557-5600

I am employed in the office of a member of the bar of this court at whose direction the service was made.

☒ BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air courier, with next day service, to the offices of the addressees. (C.C.P. § 1013(c)(d)). TRACKING #7998 5466 7334

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 15, 2008, at Costa Mesa, California.

  
Anh Dufour